

Pursuant to Fed. R. Civ. P. 12(b)(6), Defendant Brian Deso hereby moves the Court for an Order dismissing Plaintiff Lincare Inc.'s Complaint and Demand for Jury Trial (the "Complaint"). As grounds for this Motion, Mr. Deso states as follows:

2. The Agreement includes, among other provisions, a forum-selection clause stating that “the exclusive venue for any action arising out of [or] related to this Agreement shall be in the Circuit Court of Pinellas County, Florida.” *See* Complaint, Exh. 1 at § 6(f).

3. The Agreement's forum-selection clause is mandatory, Lincare does not allege that it is unfair or unreasonable, and the clause clearly applies to the causes of action that Lincare has asserted in the Complaint.

4. Accordingly, the forum-selection clause is enforceable and requires that this action be dismissed.

5. In the First Circuit, courts treat a motion seeking dismissal on the basis of a forum-selection clause as a motion to dismiss for failure to state a claim on which relief can be granted under Rule 12(b)(6). *See Rivera v. Centro Medico de Turabo, Inc.*, 575 F.3d 10, 15 (1st Cir. 2009) (citing *Silva v. Encyclopedia Britannica, Inc.*, 239 F.3d 385, 387 n.3 (1st Cir. 2001)).

WHEREFORE, Defendant respectfully requests that the Court (i) grant its Motion to Dismiss, (ii) dismiss the Complaint with prejudice, (iii) enter judgment in favor of the Defendant and against the Plaintiff, and (iv) grant Defendant such other and further relief as the Court deems just and appropriate.

Respectfully submitted,

BRIAN DESO

By his attorney,

/s/ Patrick M. Curran, Jr.

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Dated: February 3, 2023

CERTIFICATION PURSUANT TO D. MASS. LOCAL RULE 7.1(a)(2)

I hereby certify that I conferred with Plaintiff's counsel of record, John S. Gannon, Esq., by telephone on February 3, 2023, in a reasonable and good faith effort to resolve or narrow the issues raised by this Motion to the greatest extent possible, and that counsel were unable to resolve or narrow those issues.

/s/ Patrick M. Curran, Jr.
Patrick M. Curran, Jr.

CERTIFICATE OF SERVICE

I hereby certify that on February 3, 2023, this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (the “NEF”), and that paper copies will be sent to those indicated on the NEF as non-registered participants.

/s/ Patrick M. Curran, Jr.
Patrick M. Curran, Jr.